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United States of America

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
JORGE MENDOZA-RABAGO,  
  
Defendant.

CASE NO. 2:20-CR-220-JAM

STIPULATION REGARDING EXCLUDABLE  
TIME PERIODS UNDER SPEEDY TRIAL ACT;  
ORDER

DATE: December 16, 2021

TIME: 10:00 a.m.

COURT: Hon. Morrison C. England, Jr. (now  
reassigned to the Hon. John A. Mendez).

This case was set for a status conference on December 16, 2021, before Senior United States District Judge Morrison C. England, Jr. On November 9, 2021, the Court reassigned this case to United States District Judge John A. Mendez and vacated all existing dates.

By this stipulation, the parties now request that the Court set a status conference in this matter on February 15, 2022, and to exclude time under Local Code T4 as well under the Court's General Orders, for the reasons set forth below.

On April 17, 2020, this Court issued General Order 617, which suspends all jury trials in the Eastern District of California scheduled to commence before June 15, 2020, and allows district judges to continue all criminal matters to a date after June 1. This and previous General Orders were entered to address public health concerns related to COVID-19.

Although the General Orders address the district-wide health concern, the Supreme Court has emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive

openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally or in writing”).

Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice continuances are excludable only if “the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics, natural disasters, or other emergencies, this Court has discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

The government requests that, in light of the societal context created by the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4).<sup>1</sup> If continued, this

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<sup>1</sup> The parties note that General Order 612 acknowledges that a district judge may make “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D. Cal. March 18, 2020).

1 Court should designate a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172,  
2 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

3 **STIPULATION**

4 Plaintiff United States of America, by and through its counsel of record, and defendant, by and  
5 through his counsel of record, hereby stipulate as follows:

6 1. By this stipulation, the defendant now moves to continue the status conference to  
7 February 15, 2022 , and to exclude time between the date of this Court’s order, below, and February 15,  
8 2022, under Local Code T4, in addition to the exclusion of time appropriate in light of public health  
9 concerns cited by the Court’s General Orders.

10 2. The parties agree and stipulate, and request that the Court find the following:

11 a) Defense counsel needs additional time to review the plea agreement with his  
12 client, with the assistance of a Spanish-language interpreter, which has been delayed due to  
13 health and safety-related restrictions. As part of the process of negotiating a resolution to this  
14 case, defense counsel will need time to investigate and conduct research related to the current  
15 charges, and to discuss potential resolutions with his client, to prepare pretrial motions, and to  
16 otherwise prepare for trial.

17 b) The government has produced discovery in this matter, including the arresting  
18 officer’s report, photographs of the narcotics seized, and DEA laboratory reports. The  
19 government has also produced video footage of the arrest taken from a law enforcement  
20 vehicle’s in-car camera.

21 c) Counsel for the defendant believes that failure to grant the above-requested  
22 continuance would deny him the reasonable time necessary for effective preparation, taking into  
23 account the exercise of due diligence.

24 d) The government does not object to the continuance.

25 e) Based on the above-stated findings, the ends of justice served by continuing the  
26 case as requested outweigh the interest of the public and the defendant in a trial within the  
27 original date prescribed by the Speedy Trial Act.

28 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,

et seq., within which trial must commence, the time period between the date of this Court's order and February 15, 2022, inclusive, is deemed excludable pursuant to the Court's General Orders, and pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

3. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: December 21, 2021

PHILLIP A. TALBERT  
Acting United States Attorney

/s/ JAMES R. CONOLLY  
JAMES R. CONOLLY  
Assistant United States Attorney

Dated: December 21, 2021

/s/ TIM WARRINER  
TIM WARRINER  
Counsel for Defendant  
JORGE MENDOZA-RABAGO

**ORDER**

Dated: December 27, 2021

/s/ John A. Mendez  
THE HONORABLE JOHN A. MENDEZ  
UNITED STATES DISTRICT COURT JUDGE